

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 1290 - SB 1044

March 7, 2011

SUMMARY OF BILL: Broadens the factors that a court must use when determining whether an object is drug paraphernalia. Eliminates as a defense to the Class A misdemeanor offense of unlawful possession of drug paraphernalia that the object alleged to be drug paraphernalia was unused or did not contain a controlled substance. Creates a Class E felony for a person to sell, offer for sale, or advertise for sale drug paraphernalia. Requires the Department of Agriculture to enforce the provisions of this bill and to conduct random, unannounced compliance inspections at locations where tobacco products, or products believed to be drug paraphernalia are sold or distributed. Requires the Commissioner of Agriculture to impose a civil penalty of \$100, up to a maximum of \$1,000, for each item of drug paraphernalia sold or offered for sale. The assessment becomes final after 30 days unless the person assessed the penalty files a petition to review. Requires the Department, within 10 days of an assessment becoming final, to notify the appropriate District Attorney General of the civil assessment and information relevant to a possible criminal investigation. Collected civil penalties shall be deposited into the Drug Paraphernalia Sale Prevention Fund to reimburse the Department and local law enforcement agencies for costs associated with administering this bill.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – Not Significant

Increase State Expenditures – \$5,000/One-Time

\$91,800/Recurring

\$168,700/Incarceration*

Increase Local Revenue – \$26,900/One-Time

Increase Local Expenditures - \$26,900/Recurring**

Assumptions:

- Approximately 6,719 retail stores in Tennessee sell tobacco products. According to the Department of Agriculture, approximately 40 percent (2,688) are located in Knox, Shelby, and Davidson counties where the Department currently has contracts with the counties to provide food safety inspections at retail food stores. The Department will contract with these counties to provide the proposed mandatory inspections at a cost of \$10 per store for two inspections per year, resulting in a recurring increase in state expenditures of \$26,880 (2,688 sites x \$10).
- There will be a recurring increase in local government expenditures and revenue of \$26,880 (2,688 sites x \$10) for the additional inspections required by the bill.

HB 1290 - SB 1044

- The Department will require one additional food and dairy inspector position to inspect the remaining 4,031 (6,719 – 2,688) sites. The recurring cost for the additional position is \$64,960 (\$33,927 salary + \$11,873 benefits + \$9,660 travel + \$5,500 supplies + \$4,000 other related operating costs).
- Total recurring state expenditures for the Department will be \$91,840 (\$26,880 additional contracts + \$64,960 position).
- The Department will have a one-time increase in state expenditures of \$5,000 for equipment and related supplies for the additional position.
- The amount of civil fines imposed and collected is estimated to be minimal. There will not be a significant increase in revenue as a result.
- According to the Department of Correction (DOC), there have been 10 admissions for the Class E felony offense of unlawful drug paraphernalia offenses in each of the past 10 years. DOC assumes an increase of 50 percent (5) in the number of admissions as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in one additional offender in the tenth year. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on six additional offenders.
- According to DOC, the average operating cost per offender per day for calendar year 2011 is \$60.62. The average post-conviction time served for a Class E felony is 1.27 years (463.87 days) at a cost of \$28,119.80 (\$60.62 x 463.87 days). The total additional operating cost for six offenders is \$168,718.80 (\$28,119.80 x 6).
- Eliminating the defense to the Class A misdemeanor will not have a significant impact on the case loads of the judicial system and can be accommodated within existing resources.

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**Article II, Section 24 of the Tennessee Constitution provides that: *No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc